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1 James O. Johnston (Cal. Bar No. 167330)
Joshua D. Morse (Cal. Bar. No. 211050)
2 JONES DAY
555 South Flower Street, 50th Floor
3 Los Angeles, California 90071
Telephone: (213) 489-3939
4 Facsimile: (213) 243-2539
Email: jjohnston@jonesday.com
5 jmorse@jonesday.com

6 *Attorneys for Franklin High Yield Tax Free*
Income Fund and Franklin California High
7 *Yield Municipal Fund*

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9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12 In re:) Case No. 12-32118
13 CITY OF STOCKTON, CALIFORNIA,)
14 Debtor.) Chapter 9
15)
16) **FRANKLIN'S RESPONSE TO**
17) **CITY OF STOCKTON'S**
18) **OPPOSITION TO MOTION OF**
19) **ASSURED GUARANTY CORP. AND**
20) **ASSURED GUARANTY**
21) **MUNICIPAL CORP. PURSUANT TO**
22) **RULE 52(b) OF THE FEDERAL**
23) **RULES OF CIVIL PROCEDURE TO**
24) **ALTER OR AMEND THE COURT'S**
25) **FINDINGS OF FACT**
26)
27) Date: May 28, 2013
28) Time: 9:30 a.m.
Dept: C, Courtroom 35
Judge: Hon. Christopher M. Klein

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
2 Fund (collectively, the “Franklin”) did not seek reconsideration of the Court’s determination that the
3 City is eligible to be a chapter 9 debtor, and Franklin did not join in Assured’s Motion to alter or
4 amend the Court’s findings of fact.¹ Yet, despite the fact that Franklin is merely a bystander with
5 respect to this particular matter, the City made several false statements about Franklin in its
6 Opposition to the Motion. Franklin files this Response to set the record straight.

7 To start, the City asserts that “the record is clear is that Assured, along with the other Capital
8 Markets Creditors, chose to withdraw itself from the neutral evaluation process at which the City
9 successfully worked out [agreements with other creditors].” Opposition at 5-6. The City includes
10 Franklin as a “Capital Markets Creditor.” *Id.* at 2 n.2. In fact, however, the record on this point
11 directly contradicts the City’s unnecessary reference to Franklin. Franklin did **not** choose “to
12 withdraw itself from the neutral evaluation process.” Rather, the record is undisputed that
13 (1) Franklin made a counterproposal to the City’s “Ask” after the time the City alleges that Franklin
14 “withdrew” from the neutral evaluation process; (2) Franklin made that counterproposal in good
15 faith; and (3) the City made no response to Franklin’s offer.²

16 The City also claims that “this Court could reasonably infer that Assured and the other
17 Capital Markets Creditors did not disagree with NCFG’s statement” that it would not negotiate with
18 the City unless the City sought to impair CalPERS. *Id.* at 4. Here again, the City’s reference to
19 Franklin is contradicted by the record. In particular, the Court found only that “National Public
20 Finance Guarantee Corporation and Assured Guaranty [not Franklin] each took the position that
21 there was nothing to talk about unless and until the City proposed to add a plan provision that would
22 impair its obligations to CalPERS regarding pensions.”³ The City submitted no evidence that

23 ¹ Capitalized terms not otherwise defined in this Response have the meanings given to them in the
24 *City Of Stockton’s Opposition To Motion Of Assured Guaranty Corp. And Assured Guaranty*
25 *Municipal Corp. Pursuant To Rule 52(b) Of The Federal Rues Of Civil Procedure To Alter Or*
Amend The Court’s Findings Of Fact [Docket No. 902] (the “Opposition”).

26 ² *Supplemental Declaration of Marc A. Levinson* (“Levinson Decl.”) [City Trial Ex. 1398, filed as
27 Docket No. 824] ¶ 6; Tr. 4/1/13 at 573:2-4 (“Franklin Advisers[] actually did make a
counterproposal that the City concedes was made in good faith”).

28 ³ Tr. 4/1/13 at 572:15-19.

1 Franklin took or agreed with such a position.⁴ In fact, as noted above, the evidence is to the contrary
2 – *after* the City stated that it would not seek to impair CalPERS, Franklin continued to negotiate and
3 made a counteroffer to the City, to which *the City* never responded.

4 Finally, the City states that “the Capital Markets Creditors declined to pay their share” of the
5 costs of the neutral evaluation process. *Id.* at 7; *see id.* at 8 (“the Capital Markets Creditors
6 refused”). This reference to Franklin is also false. Franklin was never asked to pay for any part of
7 the neutral evaluation process.⁵ As such, as the City well knows, Franklin never refused to pay its
8 ratable share of the costs and, instead, specifically informed the City that it would participate in the
9 neutral evaluation process subject to satisfactory arrangements respecting an allocation of costs. It is
10 simply incorrect for the City to allege that Franklin “declined to pay [its] share.”

11 The City’s statements about Franklin are incorrect and irrelevant to the relief requested by
12 Assured in the Motion. Accordingly, the Court need not and should not consider or give credence to
13 them in the course of ruling upon the Motion.

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15 Respectfully submitted,

16 Dated: May 21, 2013

JONES DAY

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18 By: /s/ James O. Johnston

19 James O. Johnston
Joshua D. Morse

20 *Attorneys for Franklin High Yield Tax Free*
21 *Income Fund and Franklin California High*
22 *Yield Municipal Fund*

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25 _____
26 ⁴ Mr. Levinson testified that he was “confident that Assured did not disagree” with NCFG’s
27 position in this regard. Levinson Decl. ¶ 5. Mr. Levinson was conspicuously silent – and
28 clearly not “confident” – with respect to Franklin’s position.

⁵ Tr. 3/27/13 at 534:16-17.